LAW

Paper 9084/11

Paper 11

Key Message

To achieve the upper bands of marks candidates should ensure that they have addressed all aspects of the question. This would include analytical content and addressing the specific areas identified within the question.

Illustrative content, by statute or case, is essential to achieve the higher bands of marks, especially where specifically requested by the question.

General Comments

Although there were examples of good responses from some obviously well prepared Centres, overall the standard of many answers was disappointing. This was often caused by candidates misreading the questions or choosing to respond with pre rehearsed answers to common topics (precedent in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and illustration, especially in the precedent question **(2)** and police powers question **(4)** also caused some candidates to achieve disappointing marks. Background knowledge was often limited and superficial and in the human rights question **(1)** candidates offered responses often based on personal opinion rather than legal fact and theory.

Almost all of the candidates were able to attempt three questions, but often the third choice was poorly attempted. However standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable length given the time constraints.

The paper was of a similar level of difficulty to that set in previous years and none of the questions were considered to be particularly difficult.

bestexamhelp.com

Comments on specific questions

Question 1

This was a question on the Human Rights Act.

The question specifically required a discussion of the effectiveness of this Act. Whilst many candidates were able (with varying degrees of accuracy) to explain the processes concerning compatibility and the powers of the judiciary, surprisingly few candidates were able to discuss in any detail the rights protected by the Act. Few candidates made any mention of the specific rights protected by the Articles or showed their use in cases. To achieve the analytical element of the question candidates were expected to illustrate with examples, but few candidates could offer more than one or two cases.

Question 2

This was a question on precedent.

This was a popular question. Some candidates produced very detailed and well considered accounts, using the quotation in the question to structure their responses. Such candidates were well rewarded. However, in some Centres candidates concentrated on writing all they knew about precedent without any real reference to the command. In many cases discussion of the Practice Statement 1966 (concerning the Supreme Court) and Young (concerning the Court of Appeal), were too brief to attract much credit. It is essential that any response which attempts to discuss precedent should be supported by a wide range of appropriate citation.

© 2013

Question 3

This was a question on Tribunals.

This was well answered in some Centres with a good understanding of the Tribunals Courts and Enforcement Act 2007 and a real ability to evaluate both the concept and the recent reforms. However, some candidates took this as an invitation to discuss ADR in general and were not able to receive credit for this. Answers could have been improved by examples of the work of tribunals and more detail on composition.

Question 4

This question concerned police powers in custody.

This was not a very popular question but was a third choice for many candidates. It was often addressed in a very informal way with mentions of interrogation, recording, legal advice etc. but no accurate citation of sections or codes. Some candidate ignored the rubric and offered answers on stop, search and arrest which were not specifically within the remit of the question. Analytical content, where offered, was brief and undeveloped. It would appear that candidates are not confident in dealing with questions concerning criminal process.

Question 5

This question concerned the CPS.

This was not a very popular question, but where attempted many answers were well detailed and gave good levels of factual information. Many candidates were able to discuss the composition and function in some detail and consider the analytical component well. Additionally, some candidates considered the background for the creation of the CPS and this was well rewarded.

Question 6

This question concerned the legal profession.

This proved a popular question, but candidates were often only able to give an outline account of the training and role of the professions. Amazingly, many candidates still asserted that solicitors could not represent clients in court, with the reforms of the last century being largely ignored. Discussion of the analytical content was limited even with the best candidates, who seemed unwilling to draw a reasoned conclusion.

© 2013

LAW

Paper 9084/12

Paper 12

Key Messages

- To achieve the upper bands of marks candidates should ensure that they have read the question properly and identified the areas to be discussed. This would include analytical content and addressing only the specific areas identified within the question.
- Illustrative content, by statute or case, is essential to achieve the higher bands of marks.
- Pre prepared answers will not usually allow candidates to access the higher bands of marks.

General Comments

There were some pleasingly well written responses from some Centres with good levels of accurate detail and evidence of real understanding. However, candidates at some Centres showed a disappointing lack of knowledge on some very basic concepts and the standard of accurate citation was low. Some candidates had only a very narrow range of knowledge and wrote answers with little or no relevance to the question posed. There was also evidence that some candidates misread the questions or chose to respond with pre rehearsed answers to common topics without tailoring their answers to the specific tasks within the questions. The lack of case/statute citation and illustration, especially in the ADR question **(1)** and jury question **(6)** also caused candidates to achieve disappointing marks. Background knowledge was often limited and superficial and in the criminal process question **(3)** candidates offered responses often based on personal opinion rather than legal fact.

Almost all of the candidates were able to attempt three questions, but often the third choice was poorly attempted, suggesting a paucity of choice. However standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable depth given the time constraints.

Comments on specific questions

Question 1

This was a question asking candidates to examine the effectiveness of ADR.

It was probably the most popular question and reasonably well done, although in a number of instances there was very limited illustration with answers being couched in broad terms. Many candidates did not discuss tribunals. Of those candidates who did refer to tribunals there were entrants from entire Centres who seemed unaware of the changes introduced in 2007. Also where tribunals were discussed there was very little evaluation of the impact of the current arrangements. The main disappointment here was the failure to illustrate the circumstances where the different forms of ADR could be used. There was also sparse reference to the likes of ACAS, the use of Scott v Avery clauses, reference to commercial mediation services – the extra detail that would push scripts into band 5. Analysis was reasonable but only the best tended to offer comparison with the problems of using the courts.

© 2013

Question 2

This was a question on the process of statute creation.

There were many candidates who simply did not answer the question set but instead wrote about statutory interpretation, delegated legislation or other pre prepared topics, apparently misunderstanding the direction of the question. However the question did use a basic piece of legal terminology which should have been understood by any Law candidate. In description of the stages there was often good clear knowledge of the various stages but a number of examples of confusion, inaccuracy and lack of detail. However, even the best of candidates did not address fully the wide ranging evaluative aspects of the question.

Question 3

This was a question on triable either way process.

This question was poorly answered for the most part. Many candidates did not get past plea before venue and launched right into the trial process. Very few saw the choice of venue aspect and they did not offer a rationale of the reasons for opting for trial by jury. A limited number of candidates had the appropriate knowledge base to attempt this question and thus very few papers covered early administration hearing, plea before venue, mode of trial process, the grounds for deciding between the Magistrates' Court and the Crown Court etc. Many candidates made little reference to the scenario. There was also some misreading of the question: a number of candidates wrote essays entirely about appeals and a minority of candidates wrote essays solely about sentencing policy.

Question 4

This was a question on law reform.

The best of these were very good indeed, grasping the concept of comparison with judicial law making, but some responses were characterised by imprecision regarding the agencies (a lot got them muddled up). Some responses attempted to incorporate other reforming influences but good use of examples was thin and many did not address the reference to common law. Nevertheless some candidates showed very good knowledge of the agencies but failed to make the comparison with judge made law. However a handful of candidates covered both aspects of the question very well. The comparison required by the evaluation is a very good example of a question which allows better candidates to show what they can do.

Question 5

This was a question on the judiciary and the magistracy.

This was not a popular question. Answers to this question invariably focused on the lay magistrates and this element was often done well. Selection of the judiciary, however, received cursory mention and where developed often focused on the old selection criteria which was disappointing given that the reforms instigated by the CRA 2005 are not recent. Few candidates covered magistrates plus inferior and senior judges plus the issue of background and representativeness. The consequence was a lot of scripts only achieving mid-range marks.

Question 6

This question concerned the selection and merits of the jury.

This was a very popular question, but the overall standard of answers was somewhat variable. Students discussing selection often displayed a wide range of knowledge. There is still some blurring of the selection criteria, for example, mental incapacity as a disqualification and vetting confused with challenge. The analysis, however, did at times ignore the question focus with a tendency from some candidates to deal exclusively with disadvantages or unduly concentrate on them to the detriment of a discussion of the merits.

© 2013

LAW

Paper 9084/13

Paper 13

Key Message

To achieve the upper bands of marks candidates should ensure that they have addressed all aspects of the question. This would include (where appropriate) analytical content and the use of illustrative citation of cases and statutes.

General Comments

Although there were examples of good responses from some Centres, the overall standard of many answers was disappointing. This was often caused by candidates misreading the questions or choosing to respond with pre rehearsed answers to some topics (sentencing, statutory interpretation and Equity in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and illustration, especially in the Equity question **(5)** and bail question **(6)** also caused candidates to achieve disappointing marks. Background knowledge was often limited and superficial and in the sentencing question **(3)** candidates offered responses often based on personal opinion rather than legal fact and theory.

A number of candidates completed only two answers which might suggest poor time management techniques. A number of other candidates seemed only to be able to complete two questions with any confidence. However standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable depth.

Comments on specific questions

Question 1

This question concerned the efficacy of the Magistracy.

This question proved very popular with many candidates. Most indicated a good understanding of the role of the Magistrate often giving examples and good levels of detail. However, detail on selection process was often not well explained and the weaker candidates interpreted his as an invitation to discuss training in detail (the focus of a question in previous years). Better candidates made some good evaluative reference to "backbone".

Question 2

This question concerned the appointment of the judiciary.

This was not a popular question and when it was attempted it was not well addressed. Very few candidates could explain the processes for the appointment of the superior and inferior judiciary. Many who did attempt to discuss it couched their answers in very general terms, often focussing on old methods of selection (secret soundings etc.) and not discussing the reforms introduced by the Constitutional Reform Act 2005. Very few candidates addressed the analytical component of the question and the concept of judicial independence did not seem to be well understood.

© 2013

Question 3

This question concerned the aims of sentencing and the sentencing options available to the courts for adult offenders.

This question produced quite a range of answers. Better candidates tied aims to sentences and produced a good account addressing the question well. Others were able to describe a wide range of sentences with some accuracy but with limited reference to aims of sentencing and the sentencing powers of the courts. The question contained a clear requirement to assess the aims and sentences together and better candidates used this as a structure for their answers, producing some thoughtful responses. However, some candidates just wrote everything they knew about sentencing, including the process, ignoring the prompts within the question.

Question 4

This question concerned statutory interpretation.

This was the most popular question which produced some thoughtful and detailed answers. Good candidates were able to discuss the choices facing judges in interpreting statutes in addition to the traditional range of approaches. The very best candidates did not limit themselves to the traditional approaches but were able to show how other tools of interpretation were available to the judiciary. It was also pleasing to see an increasing number of candidates able to explain the citation well in illustration and analysing the effectiveness of these aids.

Question 5

This question concerned Equity.

This was another very popular question. Candidates offered varying levels of history - some very good, others very vague. Many responses contained little explanation or indeed illustration of modern remedies, despite this being specifically asked for in the question. This remains a common failing from year to year and Centres should ensure that candidates have enough illustrative knowledge to attempt this type of question successfully. Many candidates offered pre- prepared answers - losing the opportunity to gain higher marks.

Question 6

This question concerned bail.

This was not a popular question and most of the candidates who did attempt it had little or no real understanding of the concept. Some did attempt to discuss reasons for refusing bail, or bail conditions, but were often confused as to when bail could be granted. Candidates' answers seldom contained any statutory references or analytical content. Centres might be advised to consider criminal process in more detail in their teaching.

© 2013

LAW

Paper 9084/21

Paper 21

Key messages

- Read the questions and source material very carefully.
- Be specific about which section or sub-section of a statute and/or which aspect of a case is relevant to the question.
- Provide sufficient and clear reasoning in the answer.

General comments

This paper includes source material as well as short scenarios which give rise to legal issues. The sources paper requires candidates to read the short scenario or series of scenarios and then answer questions set on the legal implications that arise. Candidates must use the source material provided on the question paper. It replicates situations that a practising lawyer may encounter.

A good response to this paper will:

- identify the issue.
- show whether the legal issues arising are civil or criminal matters.
- respond using the source material.
- identify clearly what part of the source material is relevant.
- apply the source material in detail to the scenario.

This paper combined a question on whether a robbery had been committed in three different situations and required the interpretation of the Theft Act 1968. The second question concerned interpretation of the Trustee Act 1925. Both questions required application of legislation and in part **(a)** candidates had a relevant case to apply to the defendants; there were two cases to be considered for part **(b)**. Candidates have improved in their use of authority, particularly so in the second question in this paper, but there are still issues with the way the authority is used. It is important that Centres understand that candidates are expected to apply the various authorities in detail in order both to support their arguments and as a way of distinguishing the facts of the case.

Comments on specific questions

Question 1

This question was based on extracts from the Theft Act 1968 and the case of R v Harris. Three questions considered whether robbery had been committed under the Act. There were several different scenarios all of which could have constituted robbery.

(a) (i) In this part candidates had to consider whether Alex committed robbery when he entered a shop and demanded money and threatened that, if it were not handed over, he would burn the defendant's house down. As there was no force at the time he took the money, this cannot constitute robbery but it will be theft. Candidates generally applied the Act well although not everyone was able to identify the precise section and apply it properly and many associated the threat of force at a later time i.e. 'I will burn your house down' with the commission of robbery.

(ii) In this part the candidates needed again to decide whether robbery had been committed. In this scenario Bella and Cara had entered a Post Office, taken some money and then afterwards tied up the manager. There was no threat of force or any actual force at the time when the money was taken, so this could not constitute robbery. This part was not answered well by a majority of

© 2013

candidates who generally failed to appreciate that Bella and Cara had tied up the manager of the Post Office after the money had been taken.

(iii) Many candidates answered this part very well. The question anticipated candidates again discussing whether the defendant, Dee, had committed robbery or theft. Some of the responses were very good and used the sources well. Where candidates saw the overlap with the case of R v Harris, they were able to achieve good marks, usually in the top band.

(b) There were very few good answers to this part of the question. Candidates were expected to discuss the rights of appeal for the defendants in the scenarios discussed in the first three situations. The candidates rarely identified in which court the cases would be heard and so the answers were often confused. This was a pity because those candidates who understood the appeal process from both courts and explained it in detail were able to achieve very good marks indeed. Weaker answers limited the discussion to the facts of the case and were not sufficiently detailed about the way an appeal would proceed.

Question 2

This question included several scenarios based on the Trustee Act 1925 and considered whether a trustee could be replaced in the circumstances outlined in the scenario. Candidates were expected to use the Trustee Act 1925 s.36 as well as the two cases in the source material. The final question concerned Equity and its contribution towards the development of English law.

(a) (i) Candidates needed to focus clearly on the wording of s.36(1) in this part. This part was generally answered very well. Many candidates immediately came to the conclusion that Kiran could be replaced as trustee because, although he had been away for over a year, he had returned to England once and so has not been continuously absent. The better responses relied on re Walker and some pointed out that the case was decided in 1901 and that contact between the trustees no longer relies on face-to-face contact.

(ii) This question looked at a further scenario which again concerned the replacement of a trustee. In this case the scenario stated that Mandeep (the trustee) had recently been suffering difficulties in her business and had been declared bankrupt. This part was also answered very well and the candidates understood that this trustee could be replaced under s.36(1). Better candidates applied re Wheeler and De Rocher which held that, although bankruptcy made a trustee unfit to act, it did not make a trustee incapable of acting particularly if no moral blame was attached to the bankrupt trustee. There was some useful discussion of this case and comments on the date it was decided and on whether Mandeep was to blame for her bankruptcy.

(iii) The third part of this **(a)** part of the question again required application of s.36 of the Trustee Act 1925. This part was generally answered very well. Candidates understood that replacement of the trustees was subject to the provisions of the Trustee Act. The better candidates applied it to the facts and identified that the person who would first appoint a new trustee would be someone named in the will by Samuel and failing this, the continuing or surviving trustee would make the appointment - in this case either Mandeep or Kiran.

(b) The final part of **Question 2** required the candidates to consider the contribution made towards the development of the English law by Equity. Answers required a detailed analysis of the historical background to the growth of Equity and a discussion of the various contributions of Equity such as the rights and remedies. Better answers looked at more contemporary issues such as the use of the trust in ownership of the family home. There were some encouraging responses which moved away from the historical development of Equity and looked more closely at the contribution of Equity in recent times.

© 2013

LAW

Paper 9084/22

Paper 22

Key messages

- Read the questions and source material very carefully.
- Be specific about which section or sub-section of a statute and/or which aspect of a case is relevant to the question.
- Provide sufficient and clear reasoning in the answer.

General comments

Candidates have generally adapted well to the approach needed for the sources paper with its emphasis on the use of the source material supplied in the examination. Candidates have shown that they are able to apply the sources to the factual scenarios set and standards have been improving over the past few years. Nevertheless, candidates must be able to adapt to the different questions set and they must be flexible in their approach otherwise their answers tend to miss points and they tend to make mistakes which could easily be avoided if the examination paper and the questions set are read very carefully. So although there were some very good answers on this paper, there were also some disappointing responses to whole questions or some parts of the questions which reflected an inadequate reading of the sources given. The use of source material was usually good but candidates must always be careful to recognise the need to be specific about sections within a particular statute or about a reference to a particular part of a case or judgement.

Comments on specific questions

Candidates had a choice of one out of two questions on this paper and both questions were then split into subsections. **Question One** concerned the civil liability of the highways authority. It was based on an extract of the Highways Act 1980 and extracts from two cases, Littler v Liverpool Corporation (1968) and Gorringe v Calderdale MBC (2004). **Question Two** concerned the power of the court to impose a higher sentence where a defendant has already been convicted of two other domestic burglaries and, at the time when the burglary was committed, was over the age of eighteen. The question was based on just one source - s.111 Powers of the Criminal Courts and Sentencing Act 2000.

Question 1

(a) This part of the question was based on Gorringe as well as on s.41 Highways Act 1980. There were a number of strong answers here although a number failed to use the sources correctly. There were far too many answers that looked at the state of the road and the effect of the ice and snow. Weaker candidates did not expand on s.41 and only noted that reasonableness was involved and this almost led to the incorrect conclusion that Pippa would succeed. There were also candidates who referred to Gorringe without reference to the section and although this enabled them to draw the correct conclusion, the reasoning provided was often weak and, on occasion, confused.

(b) This part also focused on s.41 Highways Act 1980. This was not as well answered as **(a)** in that so many candidates referred to s.58 as opposed to s.41. Those who did not cite the correct section and draw appropriate conclusions often failed to provide enough reasoning to enable them to access the higher marks. Few candidates reached the top of the top band.

(c) This part expected three sources to be cited but very few candidates were able to cite them all. Many drew on both s.58 and Littler; however there were a large number of incorrect conclusions in that, although candidates were able to select the appropriate sources, they were often unable to

© 2013

interpret them appropriately. A good number of candidates had drawn assumptions throughout their responses but failed to tie them together within an overall conclusion.

(d) The final section required a detailed discussion of the difficulties that a court will face when trying to apply legislation. The main focus of the question was on intrinsic and extrinsic aids. A disappointing number of responses focused almost entirely on the three rules of interpretation and did not refer to intrinsic and extrinsic aids. Often the coverage of aids was general and quite brief. There were an encouraging number of candidates who fully applied the question and were able to provide a full and fairly current response and they were rewarded highly for this.

Question 2

(a) Candidates needed to focus on one part of the section of the statute s.111 Powers of the Criminal Courts and Sentencing Act 2000. The better candidates looked at the fact that there was a difference in ages and the fact that the law treats repeat offenders slightly differently according to the ages of the defendants. A pleasing number drew the appropriate conclusions. The majority scored well on this part of the question.

(b) The second part of the question looked at another provision of s.111 and focused on the key fact that the offence considered must have been committed after the defendants had been convicted of two other burglaries. This was answered less well and a number of candidates again focused on Andy's age rather than the issue of when the offences had been committed.

(c) This part of the question required a detailed look at issues of interpretation in relation to the places where the burglaries had taken place in order to draw a conclusion as to whether or not a burglary of a mobile home or a garage could constitute a domestic burglary. Good candidates applied s.111(5) and also looked at the different rules of interpretation but there were a number of very general answers which failed to focus on the issues of interpretation.

(d) This question asked candidates to both describe how a court would sentence the two offenders in the question and discuss alternative means of enforcing rights. There were some very good responses where sentencing principles were applied to the case study in varying degrees. One or two excellent responses both discussed the sentencing principles fully and also applied these principles to the case scenario. It was encouraging that many candidates made good factual links to Andy and Ceri and almost all managed to pick up on Andy's age and discuss sentencing and young offenders as well as make reference to s.111(2).

© 2013

LAW

Paper 9084/23
Paper 2 Data Response

Key messages

A good response to this paper will include the following:

- identify the issue
- show whether the legal issues arising are civil or criminal matters
- respond using the source material
- identify clearly what part of the source material is relevant
- apply the source material in detail to the scenario

General comments

The Law and Legal Liabilities paper is a more practical paper than **Paper 1** as it includes source material as well as short scenarios that give rise to legal issues. It requires candidates to read the short scenario or series of scenarios and to answer questions set on the legal implications that arise. Candidates must use the source material provided on the question paper. It replicates situations that a practising lawyer may encounter.

This paper offers a choice of one of two questions. The first question concentrated on issues arising under the Juries Act 1974. It considered whether certain persons would be qualified to sit as a member of the jury. There were five separate sections to consider including s.18 which considers whether a judgment could be reversed after verdict in any trial by jury. The second question was based on source material that included the Police and Criminal Evidence Act 1984, the Human Rights Act 1998 and a case called Campbell v UK.

Comments on specific questions

Question 1

(a) This question was based on the Juries Act 1974 s.1(1(a)(b)) and s.20(5). In this scenario a potential juror, Alf, had made a written statement that he was disqualified in order to avoid jury service. Alf had stated that he had not been resident in the United Kingdom for at least 5 years since the age of 13 whereas he had lived in the United Kingdom all his life. The correct conclusion to be drawn was that an offence of making false representations for the purpose of evading jury service had been committed here under s.20. This part was competently answered by the majority of candidates. The majority understood which sources to apply and came to the correct conclusion.

(b) In this part the candidates needed to consider whether the defendant, Frank can appeal against a sentence where, during his trial, a juror has not made full disclosure of an earlier 5-year prison sentence from 10 years ago. This part posed more problems than **(a)** and candidates were often confused about what they were asked to discuss. Weaker answers concentrated too much on the juror's right to sit on the jury and ignored the fact that this was a question about an appeal from Frank, the defendant, against his sentence.

(c) Many candidates answered this part poorly. The question asked candidates to discuss whether a successful appeal could be brought where a juror who is deaf had been sitting on the jury. Again as in part **(b)** many candidates thought the question was about whether the deaf juror Deena could appeal a decision refusing her the right to sit on the jury. The correct conclusion was that the fact that Deena was on the jury would not affect the decision and no appeal can be made under s.18(1).

© 2013

(d) The final part of the question asked candidates to consider the advantages and disadvantages of involving members of the public as jurors in criminal trials. There were several very good answers to this part of the question. Candidates were expected to include both advantages and disadvantages and so those candidates who chose to concentrate on only one aspect were not able to reach the top band. There was an expectation that some of the key case law would be cited such as R v Ponting, R v Young and Bushell's case.

Question 2

(a) Candidates needed to focus clearly on the wording of Code D of the PACE. This concerned the failure of the police to hold an identity parade and whether this failure was in breach of Code D. The correct conclusion was that it was practicable to hold the parade for Rahul (one of the defendants) because it would have served a useful purpose and the shopkeeper had expressed an ability to identify the suspect and finally a witness was available. This was competently answered by the majority of the candidates although weak candidates considered PACE in general and the search of Rahul's flat rather than Code D as required by the question.

(b) The second part of the question looked in more detail at the scenario and considered whether, even if there had been a breach of Code D, the evidence of the shopkeeper with regard to Rahul would be admissible under s.78 of the PACE. This required some discussion of the wider human rights issues as well as a discussion of the fairness of the proceedings. There were some good answers to this part but others were sidetracked by Rahul's confession – and later retraction of confession – into considering that the identity parade was not required as there would not be a trial.

(c) The third part of the question required consideration of whether confession by Sykes would be admitted at the trial. This part required a detailed understanding of s.78 PACE and Articles 6 and 8 under the Human Rights Act as well as the case of R v Campbell. The correct conclusion was that the confession was not admissible. Where candidates used all four sources this part was answered very well indeed and a considerable number reached the top band.

(d) The final part of the question required the candidates to consider the impact of the Human Rights Act over the past 15 years. Candidates were required to critically assess its main contributions and to illustrate the answers with relevant case law. This required reference to the articles of the convention as well as some discussion of the Act's wider impact – such matters as the fact that the judiciary cannot simply declare a piece of legislation to be unenforceable but instead can only state that it is incompatible. Reference to the fast track procedure allowing changes to legislation would be relevant. Answers in the top band included some critical analysis such as reference to the fact that some of the articles are out of date and the fact that the UK does not have a Human Rights Commission as in many other member states. There were many good answers to this part. Stronger candidates provided an in-depth factual basis across the range of topics and linked each statement back to the scenario in the question, so reaching a strong sustainable conclusion.

© 2013

LAW

Paper 9084/31

Paper 31

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question actually posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned facts; candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to the question.

General comments

There is pleasing evidence of a proportion of centres continuing to move in the right direction: it is obvious that legal rules have been taught in proper context and that candidates are becoming more selective in the material they include in answers to suit the actual question posed. This question paper brought out very variable responses from candidates and in the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive responses and/or weak application to scenario situations. Centres are encouraged to keep up their good work and, in particular, to continue to hone learner skills to analyse situations, identify key legal principle and advise those involved.

Comments on specific questions

Section A

Question 1

Questions of this type are designed to allow learners to demonstrate that they have not only studied legal principles but have explored issues concerned with those principles. This particular question addresses the issue of why the age of minority has never been reduced to lower than 18 for making valid contracts, even though there have been formal proposals put forward in the past to do so.

Few candidates truly got to grips with this one and, consequently, responses were disappointing, being almost exclusively descriptive of the law itself and nothing else.

One or two excellent responses were appropriately selective of material included and spent the majority of the time assessing the effect on the minor and on those who contract with them in each case if the age of minority was to be reduced.

Question 2

It is pleasing to report that this popular question about limitations on the award of damages produced some strong responses and very few candidates who attempted it submitted truly disastrous answers.

The better prepared candidates produced succinct discussion of compensation for the limitations of causation, remoteness and mitigation and were able to illustrate principle with reference to appropriate case law, with demonstrable understanding. Responses were generally suitably structured to formulate the assessment required by the question.

© 2013

Weaker responses tended to lack focus and were commonly based on little or no legal principle at all.

Question 3

This general question about breach of contractual terms was one of the most popular amongst candidates, but like **Question 1**, it attracted far too many responses which simply regurgitated facts and related cases and which failed to address the actual issue posed by the question.

Most candidates correctly identified and defined conditions, warranties and innominate terms and were able to offer at least a rudimentary explanation of the effect of the breach of each. For most, that is as far as the response extended.

However, there were one or two better prepared candidates who did make a valiant attempt to explore the issues which gave rise to the legal recognition of the previously unrecognised innominate term, thus acknowledging that the strict categorisation of terms when the contract is made may not always be appropriate.

Section B

Question 4

It is pleasing to report that the majority of candidates who attempted this question were able to correctly identify the area of law most closely affecting the issues set out in the scenario. However, many candidates then failed to set the scenario in the broader context of mistake as a potential vitiating factor which might render a contract void.

For many the issue was skeletal knowledge and/or poor technique. Candidates who fail to contextualise by outlining relevant legal principle and case law prior to analysing the issues raised by the scenario and applying the principles and case law to aid the drawing of conclusion, rarely do as well as they could. That was certainly true of the majority of the less well prepared candidates.

However, the better prepared and well-drilled candidates produced well-structured and logically presented argument. Operative mistake was recognised as potentially rendering a contract void and unilateral mistake as to the nature of a document signed and its associated case law, was fully explored to the extent that a meaningful, supported conclusion could be drawn and offered.

Question 5

This question was popular and generally attracted the more pleasing responses.

The best responses were presented by candidates who identified consideration as the key issue in a brief introduction and then focused on the sufficiency of consideration rule relating to part payment of debt. The rule in Pinnel's case was examined in some detail and was followed up by a full discussion of debt being discharged if fresh consideration is introduced (in the form of a new service in this instance) in return for discharge from the full debt. Credit was also granted to those candidates who considered constraints should the doctrine of equitable estoppel be invoked.

Weaker responses either used the opportunity to tell the Examiner all they knew about the rules of consideration in general and, in far too many cases, any real application of legal principle to the scenario was wanting. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus and detailed application are the keys to success.

Question 6

The scenario presented in this question required candidates to address two key issues regarding contract formation: the requirement that parties to an agreement should intend it to have legal consequences if either of them break it and the requirement that promises be 'paid' for if they are to be binding in law.

As with **Question 4**, the issue for many was skeletal knowledge and/or poor technique. Again, candidates who fail to contextualise by outlining relevant legal principle and case law prior to analysing the issues raised by the scenario and applying the principles and case law to aid the drawing of conclusion rarely do as well as

© 2013

they could. Candidates must realise that if a question covers multiple issues, skeletal knowledge demonstrated of just one of them is not going to get them very far.

However, better prepared candidates were at least able to discuss the rebuttable presumptions as regards commercial and social agreements even if far too many candidates then simply concluded that as the parties were friends, it had to be a social agreement and thus not binding. The best marks were awarded to those who explored whether or not when a professional service is performed between friends, it might be considered a commercial agreement and whether or not when a person asks a taxi-driver to give him a lift, it might give rise to the belief that the service would be paid for and thus make the commercial agreement binding.

© 2013

LAW

Paper 9084/32

Paper 32

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question actually posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned facts; candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to the question.

General comments

The paper provided a challenging range of questions as usual. The knowledge and understanding elicited from candidates was on the whole satisfactory, although answering techniques continued to vary widely.

There was clear evidence of some Centres continuing to heed previous advice but a very large proportion of Centres still need to focus on the key messages identified above.

The better prepared and more able candidates correctly identified the rules that required elucidation or discussion, were selective in the material presented and demonstrated an understanding of the question by appropriately commenting, criticising or evaluating as requested.

In the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive responses.

Unfortunately, too many candidates continue to fail to do themselves true credit in response to scenario-based questions in which there is no clear-cut answer because the candidate is unsure how a court will interpret a situation. More practice is required before presenting for examination.

Comments on specific questions

Section A

Question 1

This was by far the most popular question and the best answered with many candidates citing a range of appropriate case references. It would certainly appear that many Centres have finally recognised this topic as being particularly accessible to learners and one on which examination questions are commonly to be based. It was particularly pleasing to see such a large proportion of learners who had grasped a fundamental comprehension of principles involved, even if depth and breadth of that comprehension varied dramatically.

The best responses came from candidates who explained the need for consideration as an element of contract (the sign of a bargain) and then examined the need for that consideration to be sufficient in the sense that it represented something beneficial to the person whose promise it is to support. Having contextualised, candidates then fully explored the various types of duty that might already be owed to the person to whom a subsequent promise is made, including most of the pertinent case law such as Roffey.

© 2013

Weaker respondents generally failed to contextualise altogether and addressed the issue extremely cursorily, making no attempt whatsoever to evaluate anything.

Question 2

Many candidates who attempted this identified the common law rules for the incorporation of terms in a contract and these were often well known, but the broad fault of the majority of candidates was simply to recount rules without making even a rudimentary attempt to evaluate the rules as required by the question posed.

However, the best responses firstly explained why exemption clauses need to be controlled before attempting to assess the value of the rules of incorporation by signature, by reasonable notice and through a course of dealing (in the light of copious and largely appropriate case law) with rules of interpretation (particularly contra proferentum) in the exercise of this control.

Weaker responses tended to cover all they knew about the rules of incorporation of terms with varying degrees of accuracy and without the relevant synthesis and selection of truly appropriate material.

As the question mentioned common law rules in particular, candidates received little - if any - credit for discussion of the additional statutory rules enacted to supplement the original common law rules.

Question 3

The question comprised two parts: an analysis of the nature of the remedy and a description of the limitations on its award. It was disappointing to see a large number of learners largely ignore the analysis of the remedy's nature almost altogether.

Nevertheless, the better prepared candidates made a valiant attempt to explain the effect of the remedy in compelling contractual performance in circumstances when monetary damages would be deemed an unsuitable or inadequate remedy. Its reservation for contracts whose subject matter is somewhat unique was commonly discussed and commented upon. Limitations were often exhaustively explored along with relevant case law examples.

Less well prepared candidates offered responses which were typically very superficial and variable in accuracy.

Section B

Question 4

This question attracted responses of a disappointingly variable quality, displaying far less general understanding of underlying principles than in recent years.

Needless to say, the very best responses correctly identified and discussed the interrelationship of fraudulent misrepresentation and an operative mistake as vitiating factors that can affect the validity of a contract. The presence of a fraudulent inducement rendering the contract voidable if acted upon promptly was discussed and the effects of third party rights accruing before avoidance were effectively analysed and related to the scenario. Focus was then turned to the need to prove operative mistake if ownership of the memory sticks was to be regained by the seller. Unilateral mistake was explained and differences when contracts are made face to face, or otherwise, were explored in relation to appropriate case law. Real effort was made to be selective of material, to draw parallels between case law and scenario and to draw clear, concise conclusions.

Weaker candidates tended to use the opportunity to write everything they had learnt about mistake (or misrepresentation) and then not apply appropriate principle either with accuracy or conviction. Firm conclusion was thus commonly impossible. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus and detailed application are still the keys to success.

© 2013

Question 5

This was one of the most popular questions and yet attracted perhaps the worst general quality responses to any on the question paper. Far too many candidates attempted to respond to the question with no specific reference to any legal principle from the law of contract whilst another large proportion chose to regurgitate fact without significant application to the issues raised in the scenario, such that conclusion was at best difficult and at worst impossible.

It was pleasing to see some candidates contextualise selectively and appropriately. This scenario involved a minor in law. Contracts made by minors can generally be avoided by them without liability, but there are exceptions. The better prepared candidates correctly identified contracts of service (employment) as binding on minors as long as they are on the whole beneficial to the minor (include training). The lease was also recognised as a contract of a continuing nature and thus still voidable by Richard before (or within a reasonable time after) his 18th birthday. Candidates were consequently able to apply this knowledge to the issue of Richard's notice requirement to quit both his job and lease and draw informed conclusions based on appropriate case law.

Weaker responses tended to know of only one exception and tried to relate contracts of employment and contracts for accommodation as contracts for necessaries. Consequently confusion was the order of the day.

Question 6

This was a popular question. The majority correctly tried to identify the law on invitation to treat, offer and acceptance, but some chose to present a verbatim copy of all their notes without significant application to the scenario whilst others were more selective and made a truly gallant attempt to deal with the issues, draw conclusions and give advice.

The crux of this problem required candidates to succinctly discuss the difference between offers and invitations to treat and, with use of exemplar case law, decide whether the initial letter might be deemed an offer to sell capable of acceptance or merely an invitation for offers to buy to be made. A definite conclusion is difficult, so better prepared candidates tended to follow this up with a discussion of possibilities should the court conclude either way. Discussion then commonly followed as to whether contract was concluded in either event given case law on electronic communications.

Less well prepared candidates had a tendency to have concluded the outcome before putting pen to paper and thus either missed key questions or were drawn into verbose tangle from which they were unable to extract themselves. Meaningful conclusions were commonly weak or non-existent.

© 2013

LAW

Paper 9084/33

Paper 33

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question actually posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned facts; candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to the question.

General comments

The paper provided a challenging range of questions as usual. The knowledge and understanding elicited from candidates was on the whole satisfactory, although answering techniques continued to vary widely.

There was clear evidence of some Centres continuing to heed previous advice but a very large number of Centres still need to focus on the key messages identified above.

The better prepared and more able candidates correctly identified the rules that required elucidation or discussion, were selective in the material presented and demonstrated an understanding of the question by appropriately commenting, criticising or evaluating as requested.

In the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive responses.

Unfortunately, large numbers of candidates continue to fail to do themselves true credit in response to scenario-based questions in which there is no clear-cut answer because they are unsure how a court will interpret a situation. More practice is required before presenting for examination.

Comments on specific questions

Section A

Question 1

This was a popular question that attracted responses of very variable quality. The question required candidates to focus on a relatively narrow aspect of the controls exercised over the use of exemption and exclusion clauses.

Unfortunately, there were significant weaknesses in many responses. It would appear that weaker candidates either misread or simply misunderstood the requirements of the question. The result was all-embracing factual responses about the general control of exclusion clauses for which few marks could be awarded even if knowledge of common law controls was extensive.

Better prepared candidates, however, briefly set the context and then focused exclusively on the controls imposed by the Unfair Contract Terms Act and Unfair Terms in Consumer Transactions Regulations and then attempted a critical examination of the extent to which individual sections could have an impact on

© 2013

contracts involving consumers. The best responses involved specific examples of particular types of contract situations where the rules might have either a positive or negative impact on the position of the consumer.

Question 2

On the whole, candidates attempting this question did not generally perform well.

Nevertheless, there was a proportion of better-prepared candidates that identified the crux of the question to be a detailed discussion of the factors of causation, remoteness, mitigation and associated case law, followed by an assessment of the extent to which the factors limit awards of damages; marks in Bands 4 and sometimes 5 were achieved as a consequence.

Weaker responses frequently failed to do themselves justice by too frequently missing the point of the question. Too often candidates preferred to discuss remedies in general or the basis of or calculation of, the measure of damages and earned themselves few marks.

Question 3

This was a popular question and many candidates demonstrated a remarkable extent of factual knowledge but the ability to assess was a demonstrable weakness among many.

Responses from the better-prepared candidates included an explanation of what is meant by promissory estoppel and explained that it is an equitable remedy that is utilised by the courts under certain circumstances where there is no consideration provided for a change in contractual terms but where to permit full enforcement would be unjust. These responses were exemplified by very sound knowledge of Hughes and High Trees in detail and a host of other relevant cases. Most of the better responses covered the conditions for the application of the doctrine, but recognition of its suspensory nature was often limited or non-existent. It was surprising to see even better prepared candidates exhibit knowledge of the doctrine of waiver and its development at this level of study.

Poorly-prepared candidates tended to cite chapter and verse on consideration and demonstrated little if any grasp of the idea that promissory estoppel is only a potential defence even if almost all parroted that it's a 'shield but not a sword'.

Section B

Question 4

This was a very popular question but with often dramatically different levels of success even if the majority did recognise it as a straightforward question about misrepresentation.

The majority of answers did at least indicate some idea of the types of misrepresentation, although the answers were often muddled and many did not distinguish from Jamal's blatant deliberate/fraudulent misrepresentation (i.e. building repairs) and what may have been half-truths (business doing well) or silence [motorway). Although some did know the phrase *caveat emptor*, only a handful of candidates realised that the maxim related to Hanif's responsibility for carrying out his own investigation, and few realised that the fact that the approval of the motorway might be a matter of public record, meant it was easily discoverable by Hanif.

There was a tendency for weaker candidates to group all the issues together rather than separating them out and responses were all too frequently muddled and confused. The majority of answers used the terms void and voidable interchangeably and many candidates were a bit muddled when discussing remedies.

Question 5

Although this was a popular question, performance generally was often far from strong. Although the majority who attempted this question were aware it related to formation of contract, at times they found it difficult to apply invitation to treat, offer and acceptance with confidence and did not appear to have the range of cases to substantiate their views.

The majority of candidates recognised that this question involved distinguishing between offer and invitation to treat. Having said that, when applying the law to the facts, many candidates still became muddled as to

© 2013

whether Norman or the auctioneer was the offeror. Few discussed whether the issue of a reserve price needed to be mentioned by the auction house in advance of bidding.

Only the very best prepared candidates seemed to deal with the revocation issue well; comparatively few mentioned the issue of whether the auctioneer had deliberately failed to hear Norman's revocation or whether Norman had a responsibility to ensure that it was heard, especially as the question states that the auctioneer 'continues the sale and eventually knocks it down to Norman as the highest bidder', thus suggesting that Norman had sufficient time to get the auctioneer's attention before the hammer went down.

The majority recognised that the withdrawal of the desk by the auction house did not constitute a breach.

Weak responses were all too frequently based on a version of common sense rather than law or failed to provide adequate/accurate law to support their answers and many became muddled about who the offeror and offeree were in each situation.

Question 6

This was another popular question but one for which the largest number of candidates seemed to experience confusion in identifying the legal topic(s) being addressed. The better prepared candidate seemed to experience fewer difficulties than the less well-prepared one.

The better responses recognised the various limitations on an award of damages and utilised the Hadley and Victoria Laundry cases to support their findings regarding causation and remoteness of damage. However, quite a few among the better candidates still glossed over the issue of mitigation apart from repeating what was set out in the question.

Weaker candidates were typified by responses which all too frequently went down the wrong track altogether (discussing breach of terms or similar issues).

© 2013

LAW

Paper 9084/41
Paper 4 Law of Tort

Key Messages

Centres and candidates are reminded that ***Section A*** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules.

In ***Section B*** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion.

Therefore it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

In both ***Section A*** and ***Section B*** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority where possible.

General Comments

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in ***Section A*** and select and apply the rules to the factual scenarios in ***Section B***. Weaker candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

All candidates benefit from utilising past examination papers and mark schemes as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the question effectively.

Comments on Specific Questions

Section A

Question 1

The question required an explanation and critical assessment of the value of the extra-judicial remedy of self help. The best responses contained a detailed explanation of the remedy of self help with examples drawn from torts such as trespass to land, goods, the person and nuisance. Such responses also contained a critical analysis of the rules and a statement as to the virtues and limitations of the remedy as required by the question.

Weaker candidates tended to focus on an explanation of the rules without dealing with the evaluative aspect of the question.

In some cases, where candidates misunderstood the question, irrelevant material was presented such as the elements of negligence.

© 2013

Question 2

While candidates invariably recognised that the question required a discussion of the Occupiers' Liability Act 1957, many candidates did not focus on the particular requirement of the question which was to discuss the extent to which an occupier can limit or exclude their liability under the Act. This required a specific focus on the issue of warning notices and the restrictions imposed by UCTA 1977. The best responses involved an accurate and detailed explanation of the rules and a critical evaluation. Weaker candidates tended to focus on explanation with either minimal evaluation or in some cases none at all. These responses were generally confined to Band 3.

A small number of candidates misunderstood the requirements of the question and wrote in general terms about the occupier's liability under the OLA 1957. Such responses gained very little credit as the answers were not relevant to the question asked.

Question 3

Candidates generally identified the relevant issue which was the tort of trespass to the person. The stronger candidates were able to present a detailed account of assault, battery and false imprisonment and then discuss the key issue raised by the question – whether the tort of trespass to the person is still of significance. The best responses presented a reasoned answer supported by relevant authority. Where candidates focused exclusively on explaining the legal rules but did not address the issue raised by the question, marks were limited to Band 3.

Section B

Question 4

Candidates generally understood that the question required a discussion of liability for nervous shock in the tort of negligence. Some candidates presented a detailed account of the general principles of negligence, which was unnecessary as the scenario clearly indicates that negligence is present. The main focus of the question was the special requirements which apply in the case of nervous shock. The best responses briefly introduced the general negligence requirements and then proceeded to examine the special requirements for nervous shock in detail. The stronger candidates then applied the rules to the case of each of the three injured parties in the scenario and came to a clear conclusion in relation to each one.

Weaker candidates tended to present a less detailed account of the rules and did not apply the rules in a reasoned way resulting in marks within Band 3.

Question 5

Many candidates misunderstood the requirements of the question and discussed general negligence. The question required a discussion of the issue of *res ipsa loquitur* and damages. The best responses contained a brief introduction to the general negligence requirements and then a more detailed account of the plea of *res ipsa loquitur*, encompassing both an explanation of the effect of such a plea and an explanation of the specific requirements which must be satisfied to raise it successfully. In addition the best responses focused on the issue of damages, specifically the rules relating to remoteness.

Weaker responses tended to approach this question as one of general negligence and these responses were confined to Band 3, as were responses which presented an explanation of *res ipsa loquitur* but did not apply the rule to the factual scenario.

© 2013

Question 6

Most candidates identified the issue of Rylands v Fletcher; however some candidates did not identify the additional issue which was that of negligence. Application in many cases was confused as candidates appeared to find it difficult to address the three independent situations outlined in the scenario.

The best responses included an accurate explanation of the rules of both Rylands v Fletcher and negligence and an explanation of the relevant defences of Act of God and Act of a Stranger. In the best examples candidates were able to apply the relevant rules to each of the three situations and come to a clear and compelling conclusion in each case.

Weaker candidates tended to focus on explanation of the rules without applying them effectively to the scenario or, in some cases, provide a discussion of the facts without reference to any relevant law. In both cases marks were limited to Band 3 maximum.

© 2013

LAW

Paper 9084/42
Paper 4 Law of Tort

Key Messages

Centres and candidates are reminded that ***Section A*** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules.

In ***Section B*** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion.

Therefore it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

In both ***Section A*** and ***Section B*** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority where possible.

General Comments

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in ***Section A*** and select and apply the rules to the factual scenarios in ***Section B***. Weaker candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

All candidates benefit from utilising past examination papers and mark schemes as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the question effectively.

Comments on Specific Questions

Section A

Question 1

Candidates recognised that this question related to negligence. However many candidates wrote in detail about duty of care and breach of duty. This was not a requirement of the question and therefore merited little credit. The best answers introduced the tort of negligence and made brief reference to the three elements but then proceeded to focus on the elements of causation and remoteness. In some cases candidates were able to present a detailed account of the rules of causation and remoteness supported with relevant authority, combined with a critical analysis of whether the current rules impact on the aim of damages to fully compensate the victims of negligence.

Weaker responses tended to focus on a factual account of the rules without addressing the critical analysis and were therefore confined to Band 3.

© 2013

Question 2

There were two distinct types of response to this question. The weaker responses focused on a factual account of the current rules relating to private nuisance. In some cases these responses were accurate, detailed and supported by relevant authority; however where there was no critical analysis of the rules then the marks were restricted to Band 3.

The best responses presented a detailed and accurate account of the current rules; they also engaged in a critical analysis of at least some of the elements of private nuisance and attempted to address the question of whether the rules achieve an appropriate balance between the rights and interests of neighbours.

Question 3

Most candidates were able to explain the tort established in Rylands v Fletcher. In many cases these were detailed and accurate accounts, supported by relevant authority. However many candidates did not then address the issue of whether Rylands v Fletcher is actually a strict liability tort. This required a discussion of the impact of the Cambridge Water case and also some reference to the defences which are available in a case of Rylands v Fletcher. Candidates who presented both an explanation of the tort and a critical analysis were able to achieve marks in Bands 4 and 5.

Where candidates presented only a factual account of the rules, however detailed, the mark was restricted to Band 3.

Section B

Question 4

Candidates were required to identify the issues of trespass to land and trespass to the person, explain the relevant rules and then apply the rules to the facts.

In the best responses candidates recognised that Harry and Sally were initially lawful visitors but became trespassers when they left the public footpath. In the best answers candidates explained the requirements of the tort of trespass to land and then examined the different issues arising in relation to Harry and Sally in applying the rules to the facts.

The question then required a discussion of the tort of trespass to the person, specifically assault and battery. False imprisonment was not relevant here; although some candidates included it in their explanation, it was not creditworthy.

The best candidates presented an accurate description of assault and battery supported with relevant authority and then applied these rules to the facts to reach an appropriate conclusion.

In some cases weaker candidates gave confused accounts of assault and battery and therefore both the factual account and the application were weak. In addition some candidates used terms such as ‘charged’, ‘convicted’ which appeared to indicate a confusion between a civil action and a criminal prosecution.

Question 5

Most candidates identified the issue of pure economic loss arising from a negligent misstatement; and then to set out the rule established in Hedley Byrne v Heller in detail.

The best candidates introduced the three elements of negligence first and then proceeded to explain the additional requirements arising from the decision in Hedley Byrne. In addition the best candidates recognised the importance of the advice being given in a social setting and therefore discussed the decision in Chaudry v Prabhakar. Having explained the relevant rules with reference to supporting authority, the best candidates were able to apply the legal rules to the facts and reach a clear conclusion.

Weaker candidates tended to present a rather confused version of the rule in Hedley Byrne v Heller, often omitting key elements – as a result the application was weak and marks tended to be restricted to Band 3 maximum as a result.

© 2013

Question 6

This question concerned the issue of Occupiers' Liability and there was scope for candidates to deal with the issue under the OLA 1957 and OLA 1984. The best candidates recognised that it could fall under either Act and therefore discussed both. In the best responses this involved an accurate account of the requirements of each Act and reference to relevant case law. In terms of the application the best candidates recognised and discussed the significance of the warning signs and the age of the injured party.

Weaker candidates tended to present an explanation of the legal rules which was confused and in some cases incomplete and therefore the application was weak. These responses tended to be in Band 2 or 3.

© 2013

LAW

Paper 9084/43
Paper 4 Law of Tort

Key Messages

Centres and candidates are reminded that ***Section A*** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules.

In ***Section B*** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion.

Therefore it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

In both ***Section A*** and ***Section B*** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority where possible.

General Comments

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in ***Section A*** and select and apply the rules to the factual scenarios in ***Section B***. Weaker candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

All candidates benefit from utilising past examination papers and mark schemes as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the question effectively.

Comments on Specific Questions

Section A

Question 1

Most candidates were able to provide an explanation of the three forms of trespass to the person - Assault, Battery and False Imprisonment. The best candidates presented a detailed and accurate account of each form of trespass to the person with reference to appropriate case law. In the best answers candidates, having explained the rules, then engaged in a critical assessment of the tort of trespass to the person from the perspective of its impact on the freedom of movement of the person, which required a particular focus on the issue of false imprisonment.

Weaker candidates however focused on the presentation of the rules; in some cases there was confusion and error in the explanation and often no critical assessment.

© 2013

Question 2

Candidates did recognise the issue of the defence of consent. Most candidates were able to explain the main elements of the defence. The best candidates were able to present a detailed and accurate account with reference to appropriate case law. They then addressed the key issue raised in the question which was whether consent provides an effective defence in tort. This required a critical analysis of specific elements of the defence and of how it applies in a range of situations.

Weaker candidates tended to focus on explanation only and many did not engage in any critical analysis. In some cases the explanation was confused and incomplete.

Question 3

Many candidates presented a very brief explanation of damages without dealing in detail with the various aspects of how damages are calculated. Therefore very few candidates presented the factual account upon which to base a critical analysis. Candidates generally appeared to be unprepared for this question and to have little knowledge of the basic rules governing damages or of the issues which impact on the award of damages in tort.

Some candidates did attempt to present a more detailed explanation and did attempt to evaluate the current rules but even in the best answers there was a lack of detail and therefore the critical analysis was weak.

Section B

Question 4

In general candidates were well prepared and were able to explain the elements of the tort of private nuisance.

The best candidates were able to present a detailed and accurate account of the different factors and were able to refer to a range of appropriate cases to support their answer. In the best responses candidates were able to apply the law to the facts effectively by identifying the key issues in the scenario and focusing on those aspects in particular and then reaching a clear conclusion.

Weaker candidates tended to focus on explaining the rules but did not pay sufficient attention to analysing the facts of the scenario and therefore the application and conclusion was weak.

Question 5

Candidates generally recognised the issue of pure economic loss and were able to analyse the three different losses identified in the scenario.

Stronger candidates introduced the issue of negligence and referred to the three elements which must be established in negligence, before proceeding to an explanation of the rules relating to pure economic loss through a discussion of the relevant case law. In the best answers candidates explained the rule relating to remoteness of damage and were able to apply the rules to the facts and reach a clear conclusion.

The weaker candidates tended to present a more narrow focus and confined their answer to an explanation and discussion of the case, Spartan Steel v Martin, only. While this was relevant, to focus on it exclusively did not present a full or rounded answer to the question.

Question 6

Candidates were generally able to recognise the issue of negligence. Stronger candidates introduced the three elements of negligence but then focused on the relevant issues which were the standard of care in a case of medical negligence, causation and vicarious liability. The best answers included an accurate account of the rules relating to each issue with reference to relevant case law, an application of the rules to the facts and a clear and compelling conclusion in relation to each issue.

Weaker candidates tended to focus on issues such as duty of care which was of little relevance in this scenario. In such cases the inclusion of irrelevant material tended to produce a weak application. They also tended to omit the issue of vicarious liability completely.

© 2013